IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.142 OF 2003

The State of Maharashtra)..Appellant

Versus

Arun Malhari Gangurde & 10 Ors.)..Respondents

Mrs.U.V.Kejriwal APP for the State.

Mr.R.D.Suryawanshi for respondent nos.2 & 4 to 11.

Coram : B.H.Marlapalle & R.S.Mohite,JJ

Date : 6th March, 2007.

PC

1. This appeal has been adjourned from time to time at the request of Mrs.Kejriwal the learned APP. The prayers in the appeal memo indicate that this is an appeal for enhancement of sentence filed under Section 377 of Cr.P.C. Whereas, Mrs.Kijriwal states that this ought to be treated as an appeal against the order of acquittal. She also admits that a separate appeal for enhancement was filed which has been rejected by us and under these obtaining circumstances, if it is the intention of the State to file an appeal against the order of acquittal passed under Section 302, 307, 326, 120-B and Section 147 of IPC, the State is required to file an application under Section 378(3) of Cr.P.C. so as to seek leave to appeal.

2. On the face of the prayers in this appeal, we cannot entertain a 2nd appeal for enhancement against the very same order of sentence and hence, the appeal is not maintainable. The same is hereby dismissed.

3. However, it is clarified that this order of dismissal will not come in the way of the State to file an application under Section 378(3) of Cr.P.C. seeking leave to appeal against the order of acquittal.

(R.S.Mohite,J) **(B.H.Marlapalle,J)**